

**§ 49.135 Rule for emissions detrimental to public health or welfare.**

(a) *What is the purpose of this section?* This section is intended to prevent the emission of air pollutants from any air pollution source operating within the Indian reservation from being detrimental to public health or welfare.

(b) *Who is affected by this section?* This section applies to any person who owns or operates an air pollution source.

(c) *What are the requirements for air pollution sources?* (1) A person must not cause or allow the emission of any air pollutants from an air pollution source, in sufficient quantities and of such characteristic and duration, that the Regional Administrator determines:

(i) Causes or contributes to a violation of any national ambient air quality standard; or

(ii) Is presenting an imminent and substantial endangerment to public health or welfare, or the environment.

(2) If the Regional Administrator makes either of the determinations in paragraph (c)(1) of this section, then the Regional Administrator may require the owner or operator of the source to install air pollution controls and/or to take reasonable precautions to reduce or prevent the emissions. If the Regional Administrator determines that the installation of air pollution controls and/or reasonable precautions are necessary, then the Regional Administrator will require the owner or operator to obtain a permit to construct or permit to operate for the source. The specific requirements will be established in the required permit to construct or permit to operate.

(3) Nothing in this section affects the ability of the Regional Administrator to issue an order pursuant to section 303 of the Act to require an owner or operator to immediately reduce or cease the emission of air pollutants.

(4) Nothing in this section shall be construed to impair any cause of action or legal remedy of any person, or the public, for injury or damages arising from the emission of any air pollutant in such place, manner, or amount as to constitute a common law nuisance.

(d) *What does someone subject to this section need to do?* A person subject to

this section must comply with the terms and conditions of any permit to construct, permit to operate, or order issued by the Regional Administrator.

(e) *Definitions of terms used in this section.* The following terms that are used in this section are defined in § 49.123 General provisions: Air pollutant, air pollution source, ambient air, emission, owner or operator, permit to construct, permit to operate, Regional Administrator, source, and stationary source.

**§ 49.136 [Reserved]**

**§ 49.137 Rule for air pollution episodes.**

(a) *What is the purpose of this section?* This section establishes procedures for addressing the excessive buildup of certain air pollutants during periods of stagnant air. This section is intended to prevent the occurrence of an air pollution emergency within the Indian reservation due to the effects of these air pollutants on human health.

(b) *Who is affected by this section?* This section applies to the Regional Administrator and any person who owns or operates an air pollution source within the Indian reservation.

(c) *What are the requirements of this section?*—(1) *Air pollution action level triggers.* Conditions justifying the declaration of an air pollution alert, air pollution warning, or air pollution emergency exist whenever the Regional Administrator determines that the accumulation of air pollutants in any place is approaching, or has reached, levels that could lead to a threat to human health. The following criteria will be used for making these determinations:

(i) *Air stagnation advisory.* An air stagnation advisory may be issued by the Regional Administrator whenever meteorological conditions over a large area are conducive to the buildup of air pollutants.

(ii) *Air pollution alert.* An air pollution alert may be declared by the Regional Administrator when any one of the following levels is reached, or is

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projected to be reached, at any monitoring site and the meteorological conditions are such that the level is expected to continue or reoccur over the next 24 hours.

(A) Particulate matter (PM<sub>10</sub>): 350 micrograms per cubic meter, 24-hour average;

(B) Carbon monoxide (CO): 17 milligrams per cubic meter (15 ppm), 8-hour average;

(C) Sulfur dioxide (SO<sub>2</sub>): 800 micrograms per cubic meter (0.3 ppm), 24-hour average;

(D) Ozone (O<sub>3</sub>): 400 micrograms per cubic meter (0.2 ppm), 1-hour average;

(E) Nitrogen dioxide (NO<sub>2</sub>): 1,130 micrograms per cubic meter (0.6 ppm), 1-hour average; and 282 micrograms per cubic meter (0.15 ppm), 24-hour average.

(iii) *Air pollution warning.* An air pollution warning may be declared by the Regional Administrator when any one of the following levels is reached, or is projected to be reached, at any monitoring site and the meteorological conditions are such that the level is expected to continue or reoccur over the next 24 hours.

(A) Particulate matter (PM<sub>10</sub>): 420 micrograms per cubic meter, 24-hour average;

(B) Carbon monoxide (CO): 34 milligrams per cubic meter (30 ppm), 8-hour average;

(C) Sulfur dioxide (SO<sub>2</sub>): 1,600 micrograms per cubic meter (0.6 ppm), 24-hour average;

(D) Ozone (O<sub>3</sub>): 800 micrograms per cubic meter (0.4 ppm), 1-hour average;

(E) Nitrogen dioxide (NO<sub>2</sub>): 2,260 micrograms per cubic meter (1.2 ppm), 1-hour average; and 565 micrograms per cubic meter (0.3 ppm), 24-hour average.

(iv) *Air pollution emergency.* An air pollution emergency may be declared by the Regional Administrator when any one of the following levels is reached, or is projected to be reached, at any monitoring site and the meteorological conditions are such that the level is expected to continue or reoccur over the next 24 hours.

(A) Particulate matter (PM<sub>10</sub>): 500 micrograms per cubic meter, 24-hour average;

(B) Carbon monoxide (CO): 46 milligrams per cubic meter (40 ppm), 8-hour average;

(C) Sulfur dioxide (SO<sub>2</sub>): 2,100 micrograms per cubic meter (0.8 ppm), 24-hour average;

(D) Ozone (O<sub>3</sub>): 1,000 micrograms per cubic meter (0.5 ppm), 1-hour average;

(E) Nitrogen dioxide (NO<sub>2</sub>): 3,000 micrograms per cubic meter (1.6 ppm), 1-hour average; and 750 micrograms per cubic meter (0.4 ppm), 24-hour average.

(v) *Termination.* Once declared, an air pollution alert, warning, or emergency will remain in effect until the Regional Administrator makes a new determination and declares a new level.

(2) *Announcements by the Regional Administrator.* The Regional Administrator will request that announcement of an air stagnation advisory, air pollution alert, air pollution warning, or air pollution emergency be broadcast on local television and radio stations in the affected area and posted on their websites. Announcements will also be posted on the EPA Region 10 website and, where possible, on the websites of Tribes within the affected area. These announcements will indicate that air pollution levels exist that could potentially be harmful to human health and indicate actions that people can take to reduce exposure. The announcements will also request voluntary actions to reduce emissions from sources of air pollutants as well as indicate that a ban on open burning is in effect.

(3) *Voluntary curtailment of emissions by sources.* Whenever the Regional Administrator declares an air stagnation advisory, air pollution alert, air pollution warning, or air pollution emergency, sources of air pollutants will be requested to take voluntary actions to reduce emissions. People should refrain from using their wood-stoves and fireplaces unless they are their sole source of heat. People should reduce their use of motor vehicles to the extent possible. Industrial sources should curtail operations or switch to a cleaner fuel if possible.

(4) *Mandatory curtailment of emissions by order of the Regional Administrator.* (i) Except for exempted fires set for cultural or traditional purposes, all open burning is prohibited whenever the Regional Administrator issues an air

stagnation advisory or declares an air pollution alert, air pollution warning, or air pollution emergency. Except for exempted fires set for cultural or traditional purposes, all open burning is prohibited when a burn ban is declared pursuant to § 49.131 General rule for open burning or the EPA-approved Tribal open burning rule.

(ii) Except for exempted fires set for cultural or traditional purposes, any person conducting open burning when such an advisory is issued or declaration is made must either immediately extinguish the fire, or immediately withhold additional material such that the fire burns down.

(iii) During an air pollution warning or air pollution emergency, the Regional Administrator may issue an order to any air pollution source requiring such source to curtail or eliminate the emissions.

(d) *Definitions of terms used in this section.* The following terms that are used in this section are defined in § 49.123 General provisions: Air pollutant, air pollution source, ambient air, emission, fuel, motor vehicle, open burning, Regional Administrator, and source.

**§ 49.138 Rule for the registration of air pollution sources and the reporting of emissions.**

(a) *What is the purpose of this section?* This section allows the Regional Administrator to develop and maintain a current and accurate record of air pollution sources and their emissions within the Indian reservation.

(b) *Who is affected by this section?* This section applies to any person who owns or operates a part 71 source or an air pollution source that is subject to a standard established under section 111 or section 112 of the Federal Clean Air Act. This section also applies to any person who owns or operates any other air pollution source except those exempted in paragraph (c) of this section.

(c) *What is exempted from this section?* As provided in paragraph (b) of this section, this section does not apply to the following air pollution sources:

- (1) Air pollution sources that do not have the potential to emit more than two tons per year of any air pollutant;
- (2) Mobile sources;

(3) Single family residences, and residential buildings with four or fewer dwelling units;

(4) Air conditioning units used for human comfort that do not exhaust air pollutants into the atmosphere from any manufacturing or industrial process;

(5) Ventilating units used for human comfort that do not exhaust air pollutants into the atmosphere from any manufacturing or industrial process;

(6) Furnaces and boilers used exclusively for space heating with a rated heat input capacity of less than 400,000 British thermal units (Btu) per hour;

(7) Cooking of food, except for wholesale businesses that both cook and sell cooked food;

(8) Consumer use of office equipment and products;

(9) Janitorial services and consumer use of janitorial products;

(10) Maintenance and repair activities, except for air pollution sources engaged in the business of maintaining and repairing equipment;

(11) Agricultural activities and forestry and silvicultural activities, including agricultural burning and forestry and silvicultural burning; and

(12) Open burning.

(d) *What are the requirements of this section?* Any person who owns or operates an air pollution source subject to this section, except for part 71 sources, must register the source with the Regional Administrator and submit reports as specified in paragraph (e) of this section. Any person who owns or operates a part 71 source must submit reports as specified in paragraph (f) of this section. All registration information and reports must be submitted on forms provided by the Regional Administrator.

(e) *Are there additional requirements that must be met?* Any person who owns or operates an air pollution source subject to this section, except for part 71 sources, must register an air pollution source and submit reports as follows:

- (1) *Initial registration.* The owner or operator of an air pollution source that exists on the effective date of this section must register the air pollution source with the Regional Administrator by no later than February 15, 2007. The owner or operator of a new air